

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

December 10, 2008

No. 07-31110
Conference Calendar

Charles R. Fulbruge III
Clerk

LIONEL PARKS, SR

Plaintiff-Appellant

v.

E JORDAN, JR, District Attorney, Parish of Orleans; NEW ORLEANS CITY

Defendants-Appellees

Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. 2:07-CV-3716

Before DAVIS, WIENER, and PRADO, Circuit Judges.

PER CURIAM:*

Lionel Parks, Sr., Louisiana prisoner # 067187, appeals the dismissal of an in forma pauperis (IFP) civil rights complaint alleging that he is wrongfully imprisoned because his conviction is invalid. The district court granted the defendants' FED. R. CIV. P. 12(b)(6) motion to dismiss because it determined that Parks's claims are barred by Heck v. Humphrey, 512 U.S. 477 (1994). We review

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

this determination de novo. See *In re Katrina Canal Breaches Litigation*, 495 F.3d 191, 205 (5th Cir. 2007), cert. denied, 128 S. Ct. 1230 (2008).

Parks's claims concerning his conviction are barred by Heck because he has failed to establish that the conviction has been reversed, expunged, or otherwise invalidated. See *Heck*, 512 U.S. at 486-87. Thus, the appeal is without arguable merit and is frivolous. See *Howard v. King*, 707 F.2d 215, 219-20 (5th Cir. 1983). Because the appeal is frivolous, it is dismissed. See 5TH CIR. R. 42.2.

The district court's dismissal of the complaint for failure to state a claim for relief and our dismissal of this appeal as frivolous count as strikes for purposes of 28 U.S.C. § 1915(g). See *Adepegba v. Hammons*, 103 F.3d 383, 388 (5th Cir. 1996). Parks is warned that if he accumulates three strikes, he will be barred from proceeding IFP in any civil action or appeal filed while he is incarcerated or detained in any facility unless he is under imminent danger of serious physical injury. See § 1915(g).

APPEAL DISMISSED; SANCTION WARNING ISSUED.